

EXHIBIT 1

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

**WESLEY MCANALLY, ON §
BEHALF OF HIMSELF AND ALL §
OTHERS SIMILARLY SITUATED, §
§
PLAINTIFF §**

v. §

CIVIL ACTION NO. 5:24-cv-1393

**ELITE FIBER, LLC, JOHN §
MUSCHALEK AND LINDA §
MUSCHALEK, INDIVIDUALLY, §
§
DEFENDANTS §**

MOTION FOR ALTERNATIVE SERVICE OF PROCESS

Plaintiff's private process server has tried several times to serve Defendants and has not been able to do so despite his best efforts. It appears that Mr. and Mrs. Muschalek are not making themselves available for service of process and are in fact avoiding service of process. Therefore, Plaintiff Wesley McAnally asks the Court to allow alternative service of process on the Defendants.

Facts Supporting Relief

1. After filing this suit on December 6, 2024, Plaintiff retained a private process service company to effect service on the Defendants. The process server attempted service on Mr. and Mrs. Muschalek, both individually and (in the case of John Muschalek) as the registered agent for Elite Fiber, LLC (Exh. 1 – Texas Secretary of State Document) at 29576 Copper Crossing, Bulverde, Texas 78163 (Exh. 2 – Process Server Affidavit). A neighbor told the

process server that the Muschaleks had not been around for about the last month and that they had stated they were moving.

2. The process server then learned of a new address and tried to serve the Defendants at 817 Paddy Rd., Floresville, Texas. The Muschaleks purchased a new home at this address on October 11, 2024 (Exh. 3). The process server tried to get service on the Defendants at the new address three times. The first time, the Muschalek's daughter told them that she would not accept service, the second time, no one answered, and the third time, the Muschaleks had put several "no trespassing" signs up on the property (Ex. 2)

3. Plaintiff does not want the process server to be in danger of arrest or injury for trespassing, so service upon John Muschalek, Linda Muschalek, and Elite Fiber LLC, can be made by mailing a copy of the complaint, order for conference and summonses, as well as a copy of any order authorizing alternative service issued by this Court to John Muschalek, Linda Muschalek, and Elite Fiber, LLC at 817 Paddy Rd., Floresville, Texas 78114 by both regular and certified mail.

4. Plaintiff prays that the Court grant this motion and allow service as stated above.

Respectfully Submitted,

/s/ Josef F. Buenker

Josef F. Buenker

TBA No. 03316860

P.O. Box 10099

Houston, Texas 77206

713-868-3388 Telephone

713-683-9940 Facsimile

**ATTORNEY FOR PLAINTIFF
WESLEY MCANALLY**

CERTIFICATE OF SERVICE

I hereby certify that on January 16, 2025, I electronically filed a copy of the foregoing Motion to for Alternative Service of Process and served it by electronic transmission through the Court's CM/ECF system.

/s/ Josef F. Buenker

Josef F. Buenker

TEXAS SECRETARY of STATE
JANE NELSON

BUSINESS ORGANIZATIONS INQUIRY - VIEW ENTITY

Filing Number:
Original Date of Filing:
Formation Date:
Tax ID:
Duration:

804286009
October 25, 2021
N/A
32081603303
Perpetual

Entity Type:
Entity Status:

FEIN:

Domestic Limited Liability Company (LLC)
In existence

Name:
Address:

Elite Fiber LLC
29576 COPPER XING
BULVERDE, TX 78163-2488 USA

REGISTERED AGENT	FILING HISTORY	NAMES	MANAGEMENT	ASSUMED NAMES	ASSOCIATED ENTITIES	INITIAL ADDRESS
Name		Address			Inactive Date	
John Muschalek		29576 Copper Crossing Bulverde, TX 78163 USA				

Order

Return to Search

Instructions:
● To place an order for additional information about a filing press the 'Order' button.



Affidavit in Support of Motion for Substitute Service
United States District Court
Western District of Texas

Case Number: 5:24-CV-1393-JKP

Plaintiff: **WESLEY MCANALLY, ON BEHALF OF HIMSELF AND ALL OTHERS SIMILARLY SITUATED**

vs.

Defendant: **ELITE FIBER, LLC; JOHN MUSCHALEK AND LINDA MUSCHALEK, INDIVIDUALLY**

Received by Saddi A Frazier on the 12th day of December, 2024 at 1:15 pm to be served on **Elite Fiber, LLC by delivering to Registered Agent, John Muschalek, 29576 Copper Crossing, Bulverde, Comal County, TX 78163.**

I, Saddi A Frazier, being duly sworn, depose and say that on the **4th day of January, 2025 at 12:30 pm, I:**

deemed it impractical to personally deliver the **Summons in a Civil Action, Plaintiff's Original Complaint with Exhibit A, Civil Cover Sheet, Notice of Filing of Consents, Notice of Appearance of Josef F. Buenker, Standing Order In Civil Cases Assigned to Judge Jason Pulliam, Referral Order, and Notice of Electronic Filing** to the named defendant **Elite Fiber, LLC** in the above numbered and styled cause. Based on the information obtained in making my attempts, I believe **817 Paddy Rd, Floresville, Wilson County, TX 78114** is an address where the defendant **Elite Fiber, LLC** could most likely receive notice of this suit should alternate means of service be ordered.

Additional Information pertaining to this Service:

12/16/2024 6:30 pm Attempted service at 29576 Copper Crossing Bulverde TX, 78163 I knocked multiple time and rang the video door bell and got no response. The home was completely dark on the inside I could see inside the front window of the home into the living room and there were multiple moving boxes in the room and there were no pictures or decorations on the walls. I spoke with next door neighbors who were hanging Christmas decorations in their yard. The neighbors confirmed both John and Linda Muschalek lived in the home, but stated they have moved and not seen anyone come in or out of the home in over 30 days. The neighbor stated she spoke with Linda and John who stated they were moving but did not share where they were moving to. I left my contact information wedged in the front door and also left my card with the neighbors.

12/23/2024 1:59 pm Attempted service at 817 Paddy Rd, Floresville, TX 78114 I spoke with a family member who stated John and Linda Muschalek resided but currently weren't home. I left my contact information with the family member who stated John and Linda were her parents. The daughter stated she was visiting for the holidays, but she did not reside there. She said she was not comfortable accepting anything for them and said I would need to return at a later date to deliver to them personally.

12/27/2024 8:30 am Attempted service at 817 Paddy Rd, Floresville, TX 78114 There was no answer to the front door. There were multiple pieces of mail addressed to Linda Muschalek in the mail box. No vehicles present.

1/4/2025 12:30 pm Attempted service at 817 Paddy Rd, Floresville, TX 78114 As I entered the property I noticed there were multiple no trespassing signs posted on the two trees that are on the property next to the driveway. I could not access the front door. I honked my car horn multiple time and no one responded. There were no vehicles on the property.

EXHIBIT

2



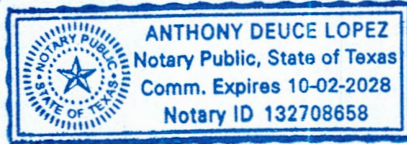
Affidavit in Support of Motion for Substitute Service For 5:24-CV-1393-JKP

I am a private process server authorized by the Texas Judicial Branch Certification Commission. I am over the age of eighteen (18) and not a party to nor interested in the outcome of the suit referenced above. I have personal knowledge of each of the matters stated herein and the statements made in this Affidavit are true and correct.

State of TEXAS, County of BEXAR

Subscribed and Sworn to before me on the 11TH
day of JANUARY, 2025 by the affiant
who is personally known to me.

NOTARY PUBLIC



Saddi A Frazier
PSC 12568 Ex. 3/31/2026

Lexitas
13101 Northwest Freeway
Suite 330
Houston, TX 77040
(713) 375-0121

Our Job Serial Number: WDL-2024002109
Ref: 23053778

Affidavit in Support of Motion for Substitute Service
United States District Court
Western District of Texas

Case Number: 5:24-CV-1393-JKP

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State of TEXAS, County of Bexar

Subscribed and Sworn to before me on the 10TH
day of JANUARY, 2025 by the affiant
who is personally known to me.

NOTARY PUBLIC



Saddi A. Frazier
Saddi A. Frazier
PSC 12568 Ex. 3/31/2026

Lexitas
13101 Northwest Freeway
Suite 330
Houston, TX 77040
(713) 375-0121

Our Job Serial Number: WDL-2024002110
Ref: 23053836

Affidavit in Support of Motion for Substitute Service
United States District Court
Western District of Texas

Case Number: 5:24-CV-1393-JKP

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OTHERS SIMILARLY SITUATED**

vs.

**Defendant: ELITE FIBER, LLC; JOHN MUSCHALEK AND LINDA
MUSCHALEK, INDIVIDUALLY**

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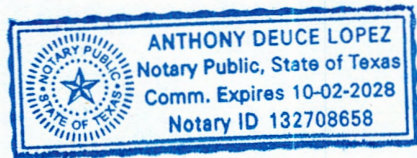
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State of TEXAS, County of BEXAR

Subscribed and Sworn to before me on the 10th
day of JANUARY, 2025 by the affiant
who is personally known to me.

NOTARY PUBLIC



Saddi A Frazier
PSC 12568 Ex. 3/31/2026

Lexitas
13101 Northwest Freeway
Suite 330
Houston, TX 77040
(713) 375-0121

Our Job Serial Number: WDL-2024002111
Ref: 23053851

GF# GF# 2448189
San Antonio- Bitters

General Warranty Deed with Vendor's Lien

Notice of confidentiality rights: If you are a natural person, you may remove or strike any or all of the following information from any instrument that transfers an interest in real property before it is filed for record in the public records: your Social Security number or your driver's license number.

Date: October 11, 2024

Grantor: Marshal Chase Kyzar and wife, Crystal L. Carrio Kyzar

Grantee: John Jace Muschalek and Linda Muschalek, husband and wife

817 Paddy Road
Floresville TX 78114

Consideration: Ten and No/100ths (\$10.00) Dollars, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and confessed, and the further consideration of the execution and delivery by said Grantee of a certain Promissory Note in the principal amount of \$667,838.00, of even date herewith, payable to the order of Highlands Residential Mortgage, LTD, hereinafter referred to as the "Mortgagee", bearing interest at the rate therein provided. The note is secured by a vendor's lien retained in this deed in favor of Highlands Residential Mortgage, LTD, and by a deed of trust of even date from Grantee to Allan B. Polunsky, Trustee.

Whereas the Mortgagee has, at the special instance and request of Grantee, paid to Grantor a portion of the purchase price of the Property, as included in the above-described Promissory Note, the said vendor's lien against the Property securing the payment of the Promissory Note and superior title are hereby assigned, transferred and delivered to Mortgagee, Grantor hereby conveying to said Mortgagee the superior title to the Property, subrogating said Mortgagee to all the rights and remedies of Grantor in the premises by virtue of said lien.

Property (including any improvements): Lot 164, The Estates at Shannon Ridge, Unit Three, as shown on plat recorded in Volume 8, Page 10, Plat Records, Wilson County, Texas.

Reservations from Conveyance: None.

Exceptions to Conveyance and Warranty: Vendor's lien and superior title retained in this deed, validly existing easements, rights-of-way, and prescriptive rights, whether of record or not; all presently recorded and validly existing restrictions, reservations, covenants, conditions, oil and gas leases, mineral interests, and water interests outstanding in persons other than Grantor, and other instruments, other than conveyances of the surface fee estate, that affect the Property; validly existing rights of adjoining owners in any walls and fences situated on a common boundary; any discrepancies, conflicts, or shortages in area or boundary lines; any encroachments or overlapping of improvements; and taxes for the current year, which Grantee assumes and agrees to pay, and subsequent assessments for that and prior years due to change in land usage, ownership, or both, the payment of which Grantee assumes.

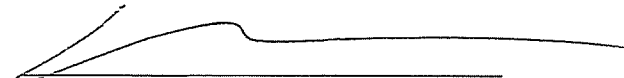
Grantor, for the Consideration and subject to the Reservations from Conveyance and the Exceptions to Conveyance and Warranty, grants, sells, and conveys to Grantee the Property, together with



any and all improvements and all and singular the rights and appurtenances thereto in any way belonging, to have and to hold it to Grantee and Grantee's heirs, successors, and assigns forever. Grantor binds Grantor and Grantor's heirs and successors to warrant and forever defend all and singular the Property to Grantee and Grantee's heirs, successors, and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof, except as to the Reservations from Conveyance and the Exceptions to Conveyance and Warranty.

It is expressly agreed that the vendor's lien herein described and superior title are retained in favor of the payee of the Promissory Note hereinabove described against the Property and any improvements thereon, until said Promissory Note and all interest thereon shall have been fully paid according to the terms thereof, at which time this deed will become absolute.

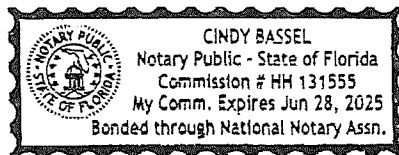
When the context requires, singular nouns and pronouns include the plural.



Marshal Chase Kyzar


Crystal L. Carrio Kyzar

THE STATE OF ~~TEXAS~~ Florida §
COUNTY OF Broward §
§

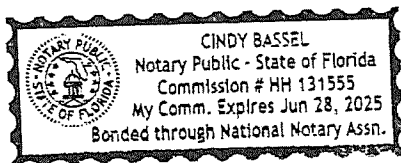
This instrument was acknowledged before me on this 11 day of October, 2024, by Marshal Chase Kyzar.

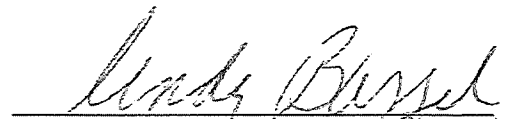



Notary Public, State of Texas Florida
Cindy Bassel

THE STATE OF ~~TEXAS~~ Florida §
COUNTY OF Broward §
§

This instrument was acknowledged before me on this 11 day of October, 2024, by Crystal L. Carrio Kyzar.




Notary Public, State of Texas Florida
Cindy Bassel

After Recording Return To:
John Jace Muschalek and Linda Muschalek

817 Paddy Road
Floresville TX 78114

**Wilson County
Genevieve
Martinez
Wilson County Clerk**

Instrument Number: 146608

eRecording - Real Property

GENERAL WARRANTY

Recorded On: October 14, 2024 01:53 PM

Number of Pages: 3

" Examined and Charged as Follows: "

Total Recording: \$29.00

******* THIS PAGE IS PART OF THE INSTRUMENT *******

Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY because of color or race is invalid and unenforceable under federal law.

File Information:

Document Number: 146608
Receipt Number: 20241011000009
Recorded Date/Time: October 14, 2024 01:53 PM
User: Krystle H
Station: cclerk05

Record and Return To:

Corporation Service Company



**STATE OF TEXAS
COUNTY OF WILSON**

I hereby certify that this Instrument was FILED In the File Number sequence on the date/time printed hereon, and was duly RECORDED in the Official Records of Wilson County, Texas.

Genevieve Martinez

Genevieve Martinez
Wilson County Clerk
Floresville, TX

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

**WESLEY MCANALLY, ON §
BEHALF OF HIMSELF AND ALL §
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V.

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MUSCHALEK AND LINDA §
MUSCHALEK, INDIVIDUALLY, §
 §
DEFENDANTS §

CIVIL ACTION NO. 5:24-cv-1393

ORDER ALLOWING ALTERNATIVE SERVICE

Pending for consideration before the Court is the Plaintiff's Motion for Alternative Service of Process. After consideration of the Motion, the Court is of the opinion that it should be granted. It is, therefore, ORDERED that the Plaintiff may accomplish service on John Muschalek, Linda Muschalek, and Elite Fiber LLC by mailing a copy of the complaint, order for conference and summonses, as well as a copy of any order authorizing alternative service issued by this Court to John Muschalek, Linda Muschalek, and Elite Fiber, LLC at 817 Paddy Rd., Floresville, Texas 78114 by both regular and certified mail.

Signed on _____, 2025 at San Antonio, Texas.

Henry J. Bemporad,
United States Magistrate Judge